

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1859 of 1989

WITH

SPECIAL CIVIL APPLICATION No 6847 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J.B. CHAUHAN & 3 ORS.

Versus

ONGC & 2 ORS.

Appearance:

(In SCA 1859/89)

MR IS SUPEHIA for Petitioners
MS VASUBEN P SHAH, Sr.Advocate, assisted by
MS KALPANA BRAHMBHATT, for Respondents

(In SCA 6847/91)

MR AH MEHTA for Petitioners
MS VASUBEN P SHAH, Sr.Advocate, assisted by
MS KALPANA BRAHMBHATT, for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/10/97

ORAL JUDGMENT

#. As both these petitions proceed on common facts and grounds, the same are being taken up for hearing together and disposed of by this common order on the request of learned counsel for parties.

#. The facts of the case are being taken from Special Civil Application No.6847 of 1991 as leading arguments in these two matters have been advanced by Shri A.H.Mehta for petitioners. All the petitioners in both these Special Civil Applications are Engineers working in the Oil & Natural Gas Commission ("ONGC" for short). The petitioners were appointed as Junior Engineers (Production) in the western region (WRBC) of ONGC on various dates as mentioned in the Special Civil Applications. On 1.1.86, none of the petitioners had completed one year's service as Junior Engineer. It is not in dispute between the parties that recruitment, appointments as well as seniority of Junior Engineers in all the disciplines are maintained at regional level. One Shri R.N.Patel was appointed on 18th June 1984 as Junior Engineer (Production) in Bombay Region (BRBC). Similarly, S/Shri S.V.Acharya, B.T.Kher, & D.B.Gond were appointed on 3.5.84, 23.4.84, and 1.6.84 respectively in BRBC as Junior Engineers (Production). All the aforesaid persons asked for voluntary transfer from BRBC to WRBC and accordingly they were ordered to transferred to Western Region.

#. The learned counsel for respondents has not disputed that if an officer is transferred from one region to another region on his own request, then it is always at the cost of his seniority. So on transfer of the aforesaid four persons they have been placed at the bottom of seniority list of the WRBC region. Accordingly, Shri Patel's seniority was fixed at Sr.No.247-A. So far as other three persons are concerned, as per petitioners' case, seniority of these three persons is still not fixed in WRBC. So Shri Patel was placed junior to all the petitioners. The ONGC has come up with a policy that such of those employees in the pay scale of Rs.725-1480 who have put in a minimum of one year of service in this pay scale as on 31.12.1985, may be considered for appointment by selection to the posts in the pay scale of Rs.1030-2000 in their respective disciplines with effect from 1.1.86. In pursuance of that scheme, the office order has been made on 3.1.89. Certain doubts were raised in implementation of that scheme and one of the doubt was regarding those employees

who have one year's service in line but have been transferred from other regions are to be considered or not for the benefit of the said scheme ? The ONGC, vide its letter dated 24th May 1989, has explained that doubt in the manner that employees having one year service as on 31.12.85 in line but who have been transferred from one region to other are also to be considered for appointment to E-O level, if they have completed one year in pay scale of Rs.725-1480 irrespective of service in different regions. Another doubt as to whether seniors who have not completed one year service as on 31.12.85 are to be considered or not, has been removed by letter dated 18th August 1989, by ONGC, stating that all such seniors who have not completed one year's service as on 31st December 1985 are to be considered for appointment to E-O level provided delay in joining service of the Corporation was not on their own, i.e. it was within 45 days from the date of offer of appointment that they joined service. The parties are also not at issue that the seniority in the cadre concerned in a given region has to be fixed in the order of merits as assigned to the candidates in the selection by selection committee.

#. As none of the petitioners were having one year's service as on 1.1.86, they were not given the benefit of the scheme as notified under the order dated 3.1.89. In the cases of Shri A.K.Rastogi and Shri M.S.Patel, the Appeals Committee has considered their cases and given a decision on 18/19th August, 1994, copy whereof has been produced on record of this Special Civil Application. Their matter has been considered with reference to the case of Shri R.N.Patel. However, in operative part, the appeal was not accepted.

#. The Special Civil Applications have been contested by ONGC by filing reply to the same.

#. The learned counsel for petitioners contended that the petitioners were senior to Shri Patel in the WRBC region and even if they have not completed 1 year services on 1.1.86, they were also entitled for the benefit of one year policy. It has next been contended that relaxation has been ordered for giving benefit of one year policy to the seniors where the juniors have been given the benefit of aforesaid policy but in the case of petitioners that relaxation has not been given. The ONGC has nowhere provided that in the other cases where a person though having longer services in another region and who gets himself transferred to the other region on his own request shall be entitled for one year policy but the seniors may not be as they have no one

year's service. By referring to the letter of the ONGC dated 18th August 1989, the learned counsel for petitioners submitted that the clarification relates to Junior Engineers who have been appointed in one and the same selection in the same Region and because of some delay in joining without there being any request from their side has been explained, but ONGC has nowhere precluded to give this benefit to the seniors who have not completed one year services and the juniors who have completed one year's services and may be otherwise senior if we go by the length of services, have been given the benefit of one year policy. Lastly, the learned counsel for the petitioners contended that the appellate committee also raised doubts in the correctness of the action of ONGC though it is a different matter that the appeal has ultimately been dismissed. However, the point raised by the appellant before the appellate authority of discrimination has not been dealt with. The learned counsel for petitioners urged that in the another discipline i.e. Junior Engineers (Mechanical), seniors who have not completed one year services on 1.1.86 were given the benefit of one year policy, as the juniors who have come from other regions after having more than one year services were given benefits and the case of petitioners is not distinguishable with the case of Junior Engineers (Mechanical), but two different yardsticks were adopted by ONGC.

#. The learned counsel for respondent-ONGC, on the other hand, contended that the claim of petitioners are totally misconceived. The petitioners cannot get benefit only on the ground that they were seniors because the eligibility prescribed for the entitlement of one year promotion was lacking. No parity can be claimed by petitioners with the case of Shri Patel who has come from other region and he was otherwise fully eligible. It has next been submitted that Shri Patel was otherwise entitled in his region for this benefit and the option to deny him that benefit would not have been justified, but the petitioners cannot be given these benefits. Carrying this contention further, the learned counsel for respondent-ONGC urged that seniority is not relevant for the purpose of giving benefit of one year policy. The one year policy contemplates itself of selection. Lastly, it is submitted that plea of discrimination is not tenable as this pertains to two different disciplines.

#. I have given my cautious thoughts to the submissions made by learned counsel for the parties.

#. Before the appellate committee, the plea of discrimination has been raised but the committee has not considered the same in its correct perspective. The learned counsel for respondent-ONGC has not disputed the fact that in the discipline of Mechanical Engineering, the Junior Engineers who have been brought on their own request on transfer to WRBC were made juniors to the existing Junior Engineers in that region but those Junior Engineers (transferees) were given the benefit of one year policy and the seniors in the region though were not having one year service as on 1.1.86, were extended the benefit of said policy. In view of this admitted position, I find sufficient merits in the contention of learned counsel for the petitioners that ONGC has made a hostile discrimination. It is not the case of respondent-ONGC that the class of Junior Engineers aforesaid were given incorrectly or erroneously the benefit of one year policy. From the very fact that in another discipline the persons similarly situated to the petitioners have been given the benefit of one year policy, I fail to see any rationality or justification not to give same benefit to the Junior Engineers of discipline 'Production'. After reading of the orders which have been issued from time to time in respect of giving effect to the benefit of one year policy, I am of the considered opinion that the intention of ONGC is that where a junior attains eligibility and seniors are lacking the same, still the seniors have to be given the benefit of one year policy. That decision is fair and reasonable and in consonance with principles of stepping up of the pay of seniors where juniors, without there being any fault of seniors start to get higher pay scale. It is understandable that for some fault of seniors, they may be deprived of the benefit of one year policy but if there is no fault of petitioners in the present case who are seniors to Shri Patel, how it can be said to be reasonable and fair on the part of ONGC to deny them the benefits of promotion only on the ground that Shri Patel was appointed earlier in point of time. It is true that seniority may not be the only consideration for giving the benefit of one year policy but at the same time, seniority is certainly a relevant factor as a senior should get the benefit earlier if otherwise he is found suitable. It is not the case of ONGC that none of the petitioners were found suitable for giving them one year policy benefits. Their cases were not considered as what the ONGC felt that they are ineligible. One of the important aspect which has not been considered is that ONGC has its own policy that transfer from one region to another region, on request is always on the loss of seniority. If that is the policy, then though otherwise

Shri Patel is junior to petitioners but still he has been given march over them only because of his services in another region have to be counted for giving him the benefit of one year policy. All the policies of ONGC have to be harmoniously construed. If the meaning of the policy of own request transfer is taken to be at the loss of seniority, then the policy of one year has to be read harmoniously so that the persons who are having lessor services though senior in the region have to be considered to be eligible for promotion. If scheme is read in any other manner, it will prejudice the case of the seniors. I find sufficient merits in the contention of learned counsel for petitioners that the intention of ONGC is to protect seniors where they are lacking requisite period of services as prescribed for the entitlement of benefit of one year policy. The learned counsel for respondents has placed much emphasis on the fact that relaxation in experience in the case of transfer on request is only available if there is a delay in joining by the officer in the cadre concerned without there being any fault on his part. This is wholly arbitrary approach of the ONGC. As already observed earlier, the aforesaid clarification may be relevant for those Junior Engineers who have been selected in one and the same selection and posted in a region but that cannot be made applicable to the cases of petitioners where there is no question of delay in joining. In absence of any such provisions, and in view of the fact that the intention of ONGC is that the seniors should not be deprived of the benefit of one year policy and in view of another fact that in the discipline of Mechanical Engineering, the persons similarly situated were given the benefit of one year policy, I fail to see any justification in the action of ONGC to deny that benefit to the petitioners.

##. The matter may be looked into from another angle. It is one of the cardinal principles of service jurisprudence that if a junior person without any fault on the part of the senior starts to get higher emoluments then normally the pay of the senior is brought at par with the pay of junior and this principle is commonly known as "stepping up of the pay". This principle has been recognized for the reason that the junior may not start to get higher emoluments than senior. The present one is not the simple case of starting of getting higher emoluments but it is a case of giving of higher status also. The persons who have been found suitable for the pay scale of 1030-2000 will be given status of A.E. which admittedly is higher post than the post of Junior Engineer. So the present is the case where seniors will

not only start to get lower emoluments but they will also have a lower status in service. There may be some justification in the rule of loss of seniority on his own request transfer of employee/officer to another region but that may not be of that much substance for the seniors as their services have been protected. However, in case where some policy is there for giving promotion to the higher cadre, then certainly it is a case where by virtue of that policy, a junior will get benefits because he has eligibility by embarrassing the position of seniors. This type of provision may also create anomaly in the pay as well as status of the seniors. In such matters, frustration may also be one of the important factor amongst the seniors which may ultimately impair their efficiency as well as enthusiasm in the work, both of which are utmost necessary for the employment. In the matter of regular promotions a question does arise as to whether such a junior could have got the promotion in preference of the seniors and the obvious reply would have been 'no'. So long as the seniors do not gain the eligibility of promotion they (juniors) will not be given promotion and if one has to be given promotion then there has to be relaxation in the requisite experience of the seniors. Otherwise, this transfer business will completely ruin the career of seniors and the persons though will be taken to be at the loss of seniority will be given all the benefits.

##. Taking into consideration the totality of the facts of the case, otherwise also, on the basis of doctrine of stepping up of the pay of seniors, and as it is a case of loss of status also, the benefits of one year policy are required to be given to the petitioners and that is only possible when they are treated to be eligible for one year policy. In the result, both these Special Civil Applications are allowed and it is hereby ordered that the petitioners should be considered to be eligible for consideration under the one year policy. The respondents are directed to consider the cases of petitioners for giving them the pay scale of Rs.1030-2000 with effect from 1.1.86 as per the policy and in case they are selected for the aforesaid pay scale, then they shall be entitled for all consequential benefits that follow therefrom with effect from 1.1.86. However, in case the petitioners or any of them is not selected for the pay scale of Rs.1030-2000, then they may not be entitled for any benefits whatsoever. The aforesaid exercise has to be undertaken and completed within a period of six months from the date of receipt of the writ of this order. All the consequential benefits to the petitioners or to those petitioners selected in the aforesaid pay scale should be

given within two months next. The Special Civil Applications and Rule stand disposed of in aforesaid terms with no order as to costs.

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(sunil)